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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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MEMORANDUM FOR SHIRLEY CANNADY
PROGRAM ANALYST
W:I:S:CP:I:XQ A5-248

FROM: Donna Welch
Senior Counsel
Administrative Provisions and Judicial Practice
CC:PA:APJP

SUBJECT: Proposal for PIN as Signature on Applications for e-Services,
e-File, and PTIN

This responds to your request for assistance as to whether the Service may accept a Personal Identification Number (PIN) as a signature on applications for e-Service, e-file, and a Preparer Tax Identification Number (PTIN). As explained below, a PIN may be legally sufficient to constitute a signature for purposes of sections 6061 and 6065 of the Internal Revenue Code (Code). The issue for the Commissioner is whether the PIN is reliable for purposes of authenticating and verifying the document.

Law and Analysis

Section 6061(a) of the Code provides that, except as otherwise provided by subsection (b) (relating to signature waivers) and section 6062 and section 6063 (relating to corporation returns and partnership returns, respectively), any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary.

Section 6065 specifies that, except as otherwise provided by the Secretary, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties or perjury.

Section 301.6061-1(b) of the Regulations on Procedure and Administration provides that the Secretary may prescribe forms, instructions, or other appropriate guidance concerning the method of signing any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations.

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Sections 6061 and 6065 of the Code and the regulations thereunder give the Secretary broad discretion to prescribe the method of signing any return, statement, or other document. Sections 6061 and 6065 do not define signature but rather subsume the common law definition. The common law definition of signature is very broad and flexible. 1 U.S.C. § 1 provides that "in determining the meaning of any Act of Congress, unless the context indicates otherwise, signature includes a mark when the person making the same intended it as such." Further, the generally accepted legal definition of signature is very broad: "whatever mark, symbol, or device one may choose to employ as representative of himself." See Black's Law Dictionary, 1381-82 (6th ed. 1990). Therefore, at the common law, the critical element of signature is the signer's act of adopting the document being "signed."

Under certain circumstances, if a person adopts a PIN as his or her signature, the PIN may satisfy the legal requirements of sections 6061 and 6065 of the Code. The signer's act of entering a PIN is sufficient to establish that the signer intended to adopt the PIN as his or her signature.

The issue for the Commissioner is whether the PIN signature is reliable for purposes of authenticating and verifying a document. In order that the Service accept PIN signatures, it must be satisfied that the PIN signature reliably authenticates and verifies the document. Reliability is ultimately a factual question. The PIN signature must assure the Service that the purported signer, and not another person, actually signed document. [REDACTED]

DP

You explain that a person will select a five-digit PIN at the time he or she registers to participate in e-Services. You further explain that as part of the registration process for e-Service, the person will have to enter certain information (including name, social security number, date of birth, and adjusted gross income for the current tax year or the prior tax year). You intend to validate this information against existing IRS databases to authenticate the user's identity before registering the user in e-Services. You also indicate that each time a user enters a PIN, the PIN will be validated against the e-trust directory. These procedures may provide sufficiently authenticate the user and the document.

If you have any further questions regarding this issue, please contact Rob Desilets, Jr. at (202) 622-4910.